

1 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

2 **IN AND FOR THE COUNTY OF APACHE**

3
4 IN RE: THE GENERAL ADJUDICATION
5 OF ALL RIGHTS TO USE WATER IN
6 THE LITTLE COLORADO RIVER
7 SYSTEM AND SOURCE

No. 6417

**APPLICATION FOR AN ORDER FOR
SPECIAL PROCEEDINGS TO
APPROVE AN INDIAN WATER
RIGHTS SETTLEMENT AND
STIPULATION**

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9 Descriptive Summary: In accordance with the Administrative Order issued by the
10 Supreme Court of Arizona on September 27, 2000, in which the Court adopted special
11 procedures for the approval of Indian water rights settlements, this is an application for an
12 order for special proceedings to approve an Indian Water Rights Settlement Agreement dated
13 June 7, 2002, as amended, and a Stipulation dated March 1, 2006, to which the undersigned
are parties. The Settlement Agreement and the Stipulation settle the claims to federally
reserved and other water rights in the Little Colorado River Basin in Arizona by the Zuni
Indian Tribe and the United States for the benefit of the Zuni Indian Tribe.

14 Statement of Claimant Numbers: Salt River Project: 39-82193 through 39-82206 and 39-
15 87393; United States for Zuni Indian Tribe: 39-91736 through 39-91752; the Lyman Water
16 Company: 39-89196; Round Valley Water Users' Association: 39-89112; Town of Eagar: 39-
17 84465 through 39-84471; Arizona Game and Fish Commission: 39-80693, 39-80963, 39-
18 83748, 39-83751, 39-83753, 39-83757, 39-83758, 39-83761, 39-83766, 39-88135, 39-88136,
19 39-88146, 39-88147, 39-88148, 39-88149, 39-88273, 39-88275, 39-88277, 39-88280, 39-
20 88600, 39-89158, 39-89160, 39-89292, 39-89293, 39-89297, 39-89298, 39-91712, 39-92045,
39-92046; Arizona State Land Department: 39-86042, and numerous others; Arizona State
Parks Board: 39-03-84421; St. Johns Irrigation & Ditch Company: 39-85024; City of St.
Johns: 39-89123 through 39-89126 and 39-91702 through 39-91706; Town of Springerville:
39-84149; Tucson Electric Power Company: 39-080889 through 39-080913.

21 Date of Filing: Original sent by overnight mail for filing on March 1, 2006.

22 Number of Pages: 8; Exhibit A – 11; Exhibit B – 5; Exhibit C - 7

23
24 In accordance with the Administrative Order issued by the Supreme Court of
25 Arizona on September 27, 2000, in which the Court adopted special procedures for the
26 approval of Indian water rights settlements, this is an Application for an Order for Special
27 Proceedings to obtain a final Judgment and Decree approving the Zuni Indian Tribe Water

1 Rights Settlement Agreement of 2002, as amended ("Settlement Agreement") and a
2 Stipulation dated March 1, 2006.

3 The Applicants are the Zuni Indian Tribe ("Tribe"), the United States of
4 America in its capacity as trustee for the Tribe, the Arizona Game and Fish Commission, the
5 Arizona State Land Department, the Arizona State Parks Board, St. Johns Irrigation & Ditch
6 Company, the Lyman Water Company, Round Valley Water Users' Association, Salt River
7 Project Agricultural Improvement and Power District, Tucson Electric Power Company, the
8 City of St. Johns, the Town of Eagar, and the Town of Springerville. The Applicants are also
9 parties to the Settlement Agreement and to the Stipulation.

10 The Settlement Agreement settles the rights of the Tribe and of the United
11 States for the benefit of the Tribe to underground water and to surface water from the Little
12 Colorado River and its tributaries in Arizona, as these terms are defined by the Settlement
13 Agreement. The Stipulation, which summarizes and incorporates the terms of the Settlement
14 Agreement, is attached as Exhibit A to this Application. The Settlement Agreement is
15 attached as Exhibit 1 to the Stipulation. A proposed Judgment and Decree, which is
16 substantially similar to the proposed Judgment and Decree attached to the Settlement
17 Agreement as Exhibit 11.9, is attached as Exhibit B to this Application.

18 An Order for Special Proceedings to Approve the Settlement Agreement and the
19 Stipulation should be issued for the following reasons:

20 1. Special circumstances prevent the consideration of the Settlement Agreement
21 and the Stipulation in the normal course of the Adjudication. The Tribe's claims, which were
22 filed by the United States for the benefit of the Tribe, are based on the federal reserved water
23 rights doctrine. These claims are not subject to the doctrine of prior appropriation as are other
24 state based water rights.

25 2. The water rights claims of the United States for the benefit of the Zuni Indian
26 Tribe, which are described in statement of claimant numbers 39-91736 through 39-91752, are
27 within the jurisdiction of the Court under the principles of Arizona v. San Carlos Apache

1 Tribe of Arizona, 463 U.S. 545 (1983) and United States v. Superior Court, 144 Ariz. 265,
2 697 P.2d 658 (1985).

3 3. The claims of the United States for the benefit of the Tribe, which are
4 described in statement of claimant numbers 39-91736 through 39-91752, are the subject of the
5 Settlement Agreement. All parties to the Settlement Agreement, other than the United States,
6 the Tribe, and the State of Arizona, are claimants in this adjudication proceeding whose
7 claims are adverse to statement of claimant numbers 39-91736 through 39-91752 by the
8 United States for the benefit of the Tribe.

9 4. The terms of the Settlement Agreement were approved, ratified and
10 confirmed by the United States Congress in the Zuni Indian Tribe Water Rights Settlement
11 Act, Public Law 108-34, 117 Stat. 788 (2003) ("Settlement Act").

12 5. Section 9(a) (12) of the Settlement Act and Paragraph 3.1.K of the Settlement
13 Agreement provide that the Settlement Agreement will not be effective unless it is approved
14 in this proceeding on or before December 31, 2006.

15 The Settlement Agreement and the Stipulation should be approved for the
16 following reasons:

17 1. The Settlement Agreement and the Stipulation are fair, adequate, reasonable,
18 and consistent with applicable law, considering all of the circumstances surrounding the
19 settlement and all of the consideration provided under the settlement.

20 2. The water rights of the Tribe and the United States for the benefit of the Tribe
21 that are resolved by the Settlement Agreement and described in the Stipulation are no more
22 extensive than the Tribe or the United States for the benefit of the Tribe would have been able
23 to prove at trial.

24 3. The Settlement Agreement and the Stipulation were reached in good faith.

25 4. The Settlement Act is consistent with the requirements of the United States
26 Constitution.

1 Copies of the Settlement Agreement, the Stipulation and the proposed Judgment
2 and Decree will be mailed to and available for inspection in the offices of the Arizona
3 Department of Water Resources and the Clerks of the Superior Court in every Arizona County
4 located within the Little Colorado River System and Source promptly upon issuance of the
5 Order for Special Proceedings.

6 Attached as Exhibit C to this Application is a proposed form of order directing
7 that special proceedings be conducted to approve the Settlement Agreement and the
8 Stipulation, and to adjudicate the federally reserved and other water rights of the Tribe and of
9 the United States for the benefit of the Tribe.

10 WHEREFORE,

11 The Applicants request that this Court enter an Order for Special Proceedings to
12 Approve an Indian Water Rights Settlement and a Stipulation, substantially in the form
13 attached as Exhibit C to this Application.

14 The Applicants also request that this Court approve the Settlement Agreement
15 and the Stipulation and enter a final judgment and decree, consistent with the proposed
16 Judgment and Decree attached hereto as Exhibit B and which is substantially in the form of
17 the proposed Judgment and Decree attached to the Settlement Agreement as Exhibit 11.9,
18 adjudicating the water rights of the Tribe and the United States for the benefit of the Tribe to
19 the water supplies within its jurisdiction as provided by the terms of the Settlement
20 Agreement. The Judgment and Decree shall be binding upon all parties to the Little Colorado
21 River Adjudication except to the extent that the express terms of the Settlement Agreement
22 and the Stipulation provide that non-signing parties will not be bound by the Settlement
23 Agreement and the Stipulation.

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26 ...

27 ...

1 RESPECTFULLY SUBMITTED this 1st day of march, 2006.

2 UNITED STATES DEPARTMENT OF JUSTICE

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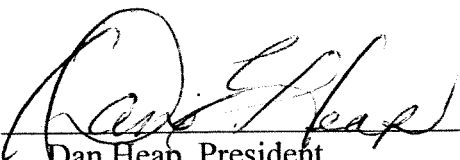
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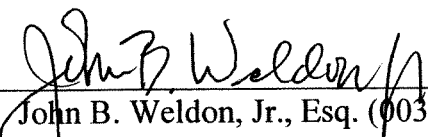
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23 By: _____
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Attorney for the City of St. Johns

1 ST. JOHNS IRRIGATION & DITCH CO.

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3 By: 
4 Dan Heap, President

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6 SALMON, LEWIS & WELDON, P.L.C.

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Attorney for Tucson Electric Power Company

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23 ~~ORIGINAL AND ONE COPY of the foregoing~~
24 ~~mailed via overnight delivery on this _____ day of~~
~~_____, 2006 for filing to:~~

25 Clerk of the Apache County Superior Court
26 Attn: Water Case 6417
27 70 West Third South
St. Johns, AZ 85936


1 ST. JOHNS IRRIGATION & DITCH CO.

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4 By: _____
5 Dan Heap, President

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23 Attorney for Tucson Electric Power Company

24 ORIGINAL AND ONE COPY of the foregoing
25 mailed via overnight delivery on this 15th day of
26 March, 2006 for filing to:

27 Clerk of the Apache County Superior Court
Attn: Water Case 6417
70 West Third South
St. Johns, AZ 85936

1 AND COPIES of the foregoing sent via first-class mail
2 on March 1, 2006 to:

3 The Hon. Eddward P. Ballinger, Jr.
4 Judge of the Superior Court
5 18380 N. 40th St., Ste. 120
6 Phoenix, AZ 85032

7 AND COPIES of the foregoing sent via first-class mail
8 this 15th day of March, 2006 to all parties
9 appearing on the Court-approved mailing list for this
10 Adjudication dated June 15, 2005

11 Cheryl Kilcline
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